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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 United States of America, ) No. CV 08-1152-PHX-SMM (LOA)

10 Plaintiff, ) No. CR 07-1387-PHX-SMM

11 v. ) **ORDER**

12 Sergio Fernandez-Mendoza, )

13 Defendant/Movant. )

14 \_\_\_\_\_ )

15 Movant Sergio Fernandez-Mendoza, who is confined in the CCA/CADC in Florence,

16 Arizona, Arizona, has filed a *pro se* “Motion for Time Reduction by an Inmate in Federal

17 Custody, (28 U.S.C. § 2255)” (“Motion”). (Doc.# 18.)<sup>1</sup> The Court will deny the Motion

18 with leave to amend.

19 **I. Failure to Use the Court-Approved Form**

20 The Rules Governing Section 2255 Proceedings for the United States District Courts

21 allow the Court, by local rule, to prescribe a form to be used for filing a § 2255 motion. See

22 Rule 2(c), Rules Governing Section 2255 Proceedings, foll. 28 U.S.C. § 2255. Under this

23 Court’s local rule, Movant must use the court-approved form when he files a *pro se* motion

24 pursuant to 28 U.S.C. § 2255. See LRCiv 3.5(a). Movant has not used the court-approved

25 form.

26 The Court may, in its discretion, forgo the requirement that a movant use a court-

27 approved form. See LRCiv 3.5(a). The Court will require use of the court-approved form

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<sup>1</sup> “Doc.#” refers to the docket number of filings in the criminal case.

1 because Movant's Motion does not substantially comply with the court-approved form.  
2 Therefore, the Motion will be denied with leave to file an amended motion within 30 days.

## 3 **II. Leave to Amend**

4 Within 30 days, Movant may submit an amended motion on the court-approved form.  
5 The Clerk of Court will mail Movant a court-approved form to use for filing an amended  
6 motion. Movant must submit the amended motion on the court-approved form and sign it  
7 under penalty of perjury. If Movant fails to file an amended motion within 30 days from the  
8 date of filing of this Order, the Court will dismiss this § 2255 action without further notice  
9 to Movant. If Movant fails to use the court-approved form, the Court may strike the  
10 amended motion and dismiss this § 2255 action without further notice to Movant.

11 Movant must clearly designate on the face of the document that it is an "Amended  
12 Motion." The amended motion must be retyped or rewritten in its entirety on a court-  
13 approved form and may not incorporate any part of the original Motion by reference.  
14 Movant must describe each ground for relief and the facts supporting each ground.

15 An amended motion supersedes an original motion. See Ferdik v. Bonzelet, 963 F.2d  
16 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546  
17 (9th Cir. 1990). After amendment, the Court will treat an original motion as nonexistent.  
18 Ferdik, 963 F.2d at 1262. Any ground for relief that was raised in the original Motion is  
19 waived if it is not raised in an amended motion. See King v. Atiyeh, 814 F.2d 565, 567 (9th  
20 Cir. 1987).

## 21 **III. Warnings**

### 22 **A. Address Changes**

23 Movant must file and serve a notice of a change of address in accordance with Rule  
24 83.3(d) of the Local Rules of Civil Procedure. Movant must not include a motion for other  
25 relief with a notice of change of address. Failure to comply may result in dismissal of this  
26 § 2255 action.

### 27 **B. Copies**

28 Movant must submit an additional copy of every filing for use by the Court. See

1 LRCiv 5.4. Failure to comply with this requirement may result in the filing being stricken  
2 without further notice to Movant.

3 **C. Possible Dismissal**

4 If Movant fails to timely comply with every provision of this Order, including these  
5 warnings, the Court may dismiss this § 2255 action without further notice. See Ferdik, 963  
6 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any order  
7 of the Court).

8 **IT IS ORDERED:**

9 (1) Movant's "Motion for Time Reduction by an Inmate in Federal Custody, (28  
10 U.S.C. § 2255)" (Doc.# 18 in CR 07-1387-PHX-SMM; Doc.# 1 & 2 in CV08-1152-PHX-  
11 SMM) is **denied with leave to amend**. Movant has **30 days** from the date of filing of this  
12 Order to file an amended motion in compliance with this Order.

13 (2) If Movant fails to file an amended motion within 30 days, the Clerk of Court  
14 must, without further notice, enter a judgment of dismissal of this § 2255 action, without  
15 prejudice.

16 (3) The Clerk of Court must mail Movant a court-approved form for filing a  
17 Motion to Vacate, Set Aside or Correct Sentence By a Person in Federal Custody (28 U.S.C.  
18 § 2255).

19 DATED this 9<sup>th</sup> day of July, 2008.

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23 Stephen M. McNamee  
24 United States District Judge  
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